

the Hebrew month of Tammuz. On that same day, "Moses came near the camp and saw the calf (idol) and the dancing, he became enraged; and he hurled the tablets from his hands and shattered them at the foot of the mountain." (Exodus 32: 19) One can argue that the pinnacle of his life's work was the receiving of the Ten Commandments; and there they lay shattered at his feet. Moses could have given up then, but he did not. Rather he climbed back up Mt. Sinai on the 1st of Elul and remained there for 40 days. Remember, according to the text he is 80 years old at the time. While up there he asked to see God face to face, but God told him that that would be impossible as he could not survive such an encounter and live.

God tells Moses, after Moses carves a second set of blank tablets that God will write the Ten Commandments on again, to go to a crack in the mountain. At that point, as God's back passes before Moses God reveals his essential attributes, "The Lord! the Lord! a God compassionate and generous, slow to anger, abounding in kindness and faithfulness, extending kindness to a thousand generations, forgiving iniquity, transgression, and sin." (Exodus 34: These attributes are sung as part of the liturgy of the Jewish holidays at the beginning of the year, as well as at other holidays during the year. At the beginning of the year they remind us when Moses was back up on Mt. Sinai and when he returned to the people with the new set of tablets 40 days later on Yom Kippur.

Moses climbing back up the mountain serves as an important model for all of us, not just those dealing with the aftermath of Hurricane Irene. We all have moments in our lives when something has been shattered. Often the easiest way to deal with that new reality is to run away from it. That is not what the actions of Moses tell us to do. When Moses finds his life's work shattered in front of him he turns back and retraces his steps up that steep mountain. The word for repentance, the main theme of the holidays at the beginning of the Jewish new year, in Hebrew is teshuvah which means to return. Both the cycles of the shofar's notes and the model of Moses returning to get a new set of tablets provide us with a way to address what may have been shattered by Hurricane Irene.

#### JUSTICE CLARENCE THOMAS

Mr. HATCH. Mr. President, 20 years ago this week Justice Clarence Thomas took his seat on the Supreme Court of the United States. With the expectation that these are only the first two of his decades on the Court, I want to offer a few thoughts about Clarence Thomas, both as a judge and as a person.

Clarence Thomas was born on June 23, 1948, in Pinpoint, GA. Poverty and segregation contributed to how he understands the past, present, and future of our country but, as he has often said, rising above and growing beyond difficulties is more important than the difficulties themselves. That is a powerful part of his life and the hope that his life represents for us all. Helping him on that path were his maternal grandparents, Myers and Christine Anderson, with whom he lived after the age of 7 and whose influence shaped his character. Few books have had a more poignant title than Justice Thomas' autobiography, *My Grandfather's Son*, for that is exactly what he was then and remains today.

Clarence Thomas was an honor student in high school and the first person in his family to attend college. He graduated cum laude from Holy Cross College with a degree in English literature and in 1974 received his law degree from Yale. After serving as Assistant Attorney General of Missouri under then-Missouri Attorney General John Ashcroft and a stint with the Monsanto Corporation, Thomas accompanied Senator John Ashcroft here to this body as a legislative assistant specializing in energy issues.

President Reagan appointed Clarence Thomas first to be an Assistant Secretary of Education and then Chairman of the Equal Employment Opportunity Commission. He remains the longest serving chairman in EEOC history. After he left for the judiciary, EEOC employees used their own personal funds to purchase a plaque for the lobby.

Here is what it said:

Clarence Thomas, Chairman of the U.S. Equal Employment Opportunity Commission . . . is honored here by the Commission and its employees, with this expression of our respect and profound appreciation for his dedicated leadership exemplified by his personal integrity and unwavering commitments to freedom, justice, and equality of opportunity, and to the highest standards of government.

President George H.W. Bush appointed him to the U.S. Court of Appeals for the D.C. Circuit in 1990 and to the Supreme Court in 1991.

So much can be said about any life and career, let alone one that is already so full and rich. Analysts and pundits, admirers and enemies, lawyer or layman, nearly everyone has at least an impression of Justice Thomas, and nearly as many have an opinion. The Internet and library shelves are rapidly filling with commentary, analysis, biography, and even psychoanalysis. I will not attempt to do anything so sweeping, but simply offer a few observations about Clarence Thomas as a judge and as a person.

Professor Gary McDowell wrote at the time of Justice Thomas' appointment that the "true bone of contention here is . . . the proper role of the Court in American society, and the about the nature and extent of judicial power under a written Constitution." That is the bone of contention in every judicial confirmation because the debate over judicial appointments is really a debate over judicial power.

In general, the judicial power provided by Article III of the Constitution means that Federal judges interpret and apply written law to decide cases. The main source of judicial appointment controversy is about how judges should do the first of these tasks, how they should interpret written law such as statutes and, especially, the Constitution.

Legislatures choose the words of statutes, and the people choose the words of the Constitution. Judges may not pick the words of our laws, but they do have to figure out what those

words mean so that they can decide cases. The dispute over judicial appointments is over whether the meaning of our laws comes from those who make our laws or from judges who interpret them.

There are innumerable variations and applications of these two general approaches. After all, we lawyers spend three or more grueling years learning how to make words mean whatever we want, to split a single legal hair at least six different ways, and to make the simple masquerade as the profound. But at its core, the battle over judicial appointments is about whether statutes mean what the legislature meant, and whether the Constitution means what the people meant. The alternative is an increasingly powerful judiciary, able to change our laws by changing their meaning.

Justice Thomas refuses to go there. Shortly after he became an appeals court judge in 1990, he was speaking to a friend and reflecting on his new judicial role.

He had, as I described a minute ago, worked in the legislative and executive branches and was actively involved in the process of developing policy and making law. Now, he told his friend, "whenever I put on my robe I have to remind myself that I am only a judge."

Only a judge. That statement almost does not compute in 21st century America. Judges today are asked, and many gladly accept the invitation, to solve our problems, heal our wounds, revise our values, reconfigure our rights, and even restructure our economy. We have traveled far from Alexander Hamilton calling the judiciary the weakest and least dangerous branch to Charles Evans Hughes saying that the Constitution is whatever the judges say it is.

That is the wrong direction for Justice Thomas. His view that he is only a judge means that while judges alone may properly play the judicial role, that judicial role is part of a larger system of government, which operates within a much larger culture and society.

Liberty requires that government, including judges, stay within their proper bounds and allow people to make their own decisions and live their own lives. Justice Thomas' view that liberty requires limits on government, including on the judiciary, parallels the very principles on which our country was founded and which are necessary for us to remain free.

But for him this is more than theoretical. James Madison had said that if men were angels, no government would be necessary and if angels governed men, no limits on government would be necessary. Justice Thomas not only knows those as axioms, but literally as life lessons. Growing up in poverty and segregation, he experienced the dark side of human nature. Studying and working in government, he knows the damage it can do when government exceeds its proper limits.

The Senate knew from the beginning what kind of Judge Clarence Thomas would be. While still EEOC chairman, he had written about a judiciary “active in defending the Constitution but judicious in its restraint and moderation.” At the Judiciary Committee hearing for his appeals court appointment, he said unambiguously that the ultimate purpose of both statutory construction and constitutional interpretation is to determine what the authors of the law intended. And he would later write in a concurring opinion on the Supreme Court: “Though the temptation may be great, we must not succumb. The Constitution is not a license for federal judges to further social policy goals.”

In my opening statement at Justice Thomas’ hearing, I said that “I am confident that Judge Thomas will interpret the law according to its original meaning, rather than substitute his own policy preferences for the law.” That is the kind of judge America needs, and that is what Justice Thomas has consistently been for the past two decades.

Those who opposed Justice Thomas’ appointment, and who continue to criticize his service, take the opposite view. They believe that the Constitution is a license for Federal judges to further social policy goals. When I look at the social policy goals these folks want to further, I am not surprised. Their political agenda is, to put it mildly, unpopular with the American people and, therefore, unsuccessful in legislatures. The only way for them to win is to impose their agenda through the courts and that requires judges willing to do the imposing. Justice Thomas is not their kind of judge.

Those whose political fortunes depend on political judges went to extraordinary lengths to keep Justice Thomas off the Supreme Court. When their efforts failed, they have gone to great lengths to belittle and smear his service on the Court. For years, they said that Justice Thomas was simply parroting his fellow originalist, Justice Scalia, since they vote the same way so often. As recounted in the book *Supreme Discomfort*, Justice Scalia said that this criticism is nothing but a slur on both him and Justice Thomas. He said: “The myth’s persistence is either racist or it’s political hatred.”

Liberals never even mentioned, let alone criticized, that Justice Thurgood Marshall voted even more often with fellow activist Justice William Brennan. Why the double standard? Because liberals like activist judges such as Marshall and don’t like restrained judges such as Thomas. The real point, after all, is not that two Justices agree but what they agree on.

Or some take pot shots at the fact that Justice Thomas asks few questions in oral argument. Needless to say, if he did speak up more often, these same folks would nit-pick what he said. Justice Thomas has said that the purpose of oral argument is for him

to listen to the lawyers, not for the lawyers to listen to him.

Other critics just call him names. In 1992, the *New York Times* called him the youngest, cruelest justice for his dissent in an Eighth Amendment case. Fast forward to this year, with *Slate* writer Dahlia Lithwick calling him cruel and saying that he wrote “one of the meanest Supreme Court decisions ever.” Anyone who knows Justice Thomas knows that he just does not care how papers or pundits feel about his opinions. The way many of them report or comment on his work, it’s doubtful they even read his opinions.

No, Justice Thomas does not care how critics feel, he cares only whether he gets each case right and applies the law impartially. Justice Thomas believes that our system of government and our written Constitution define his judicial role and that he has no authority to do otherwise. He is both principled and independent.

These are not attacks on Clarence Thomas the man, or even on Clarence Thomas the Justice. Many times, they are really attacks on the kind of Justice that he represents. Many times, they are attacks on the idea that the Constitution is fixed and sure rather than malleable, that the Constitution belongs to the people rather than to judges, that the Constitution trumps politics.

I believe today what I said in Justice Thomas’ hearing, that these opponents actually fear that he will in fact be faithful to the Constitution and to federal laws as we enact them, rather than to their political agenda. Frankly, I am pleased to say that he has confirmed that fear because Justice Thomas has steadfastly kept the Constitution, rather than any political agenda, as his guide. The truth is that he is writing some of the most persuasive, profound, and powerful opinions on the Supreme Court today.

As a Justice, Clarence Thomas has had a significant impact on our country and on the law. As a person, Clarence Thomas has similarly had a profound impact on people’s lives. These certainly include the dozens of women and men who have served as his law clerks through the years. I invited some of them to write letters offering their own reflections and I will ask unanimous consent that these letters be printed in the RECORD following my remarks. I urge my colleagues to read them. Some of them include erudite analysis of Justice Thomas’ approach to judging. You don’t get to be a Supreme Court clerk, after all, without at least the potential for erudition. But every one of them includes personal anecdotes and memories about how Justice Thomas continues to impact their lives.

Federal judges in general, and Supreme Court Justices in particular, receive dozens and even hundreds of invitations to speak at events of all kinds. Justices appear at grand podiums in the great halls of the nation’s most

prestigious academic institutions. Justice Thomas, however, is more likely to be found speaking at schools known little beyond the communities they serve.

Or speaking to young people who are trying to get their lives back on track. On June 17, 1997, Justice Thomas gave a most memorable graduation address. The institution was Youth for Tomorrow, a residential program for at-risk youth founded by former Washington Redskins head coach Joe Gibbs. The website of this wonderful program states its mission: to provide these young people the opportunity and motivation to focus their lives and develop the confidence, skills, intellectual ability, spiritual insight and moral integrity to become responsible and productive members of society.

June is the busiest month of the Supreme Court’s term, with Justices and clerks working longer and longer days to complete opinions for the term’s hardest cases. This graduation was on a weekday, and Youth for Tomorrow is located out in Prince William County. But none of that mattered to Justice Thomas. On that day, just one young man received a high school diploma.

That’s right, Justice Thomas was the commencement speaker for a high school class of one. When that young man says that Justice Thomas was his high school graduation speaker, he really means it.

Justice Thomas applauded the decisions that the young men in the Youth for Tomorrow program were now making. He was proud to come to them as a speaker, he said, rather than to have them come before him as a judge.

Let me close by returning to the words of that plaque placed by EEOC employees.

Through turbulence and calm, highs and lows, controversy and consensus, Justice Clarence Thomas continues to exemplify personal integrity and unwavering commitment to freedom, justice, and equality of opportunity, and to the highest standards of government. He may be only a judge, but Justice Clarence Thomas is truly a force for good in our country.

I now ask unanimous consent that the letters to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNIVERSITY OF CALIFORNIA, BERKELEY, SCHOOL OF LAW,  
Berkeley, CA, October 6, 2011.

Hon. ORRIN G. HATCH,  
*United States Senator,*  
*U.S. Senate, Washington, DC.*

DEAR SENATOR HATCH: Thank you for your speech commemorating the twentieth anniversary of the United States Senate’s confirmation of Clarence Thomas as an Associate Justice of the United States Supreme Court. I am honored that you asked me, a former clerk to Justice Thomas and former general counsel to the Senate Judiciary Committee during your chairmanship, to contribute this letter for the Congressional Record. Without your irreplaceable leadership, Justice Thomas could never have been

confirmed, so you have been responsible for the two most important years of my career.

Historians will always record that Justice Thomas was the second African-American to serve on the Supreme Court, following the great Thurgood Marshall. But this symbolism is of secondary importance. Justice Thomas's contribution to our Supreme Court is his powerful intellect and his unique commitment to the principle that the Constitution means what the framers thought it meant.

This can make Justice Thomas unpredictable to those who view Supreme Court decisions through a partisan lens. He agrees, for example, that the use of thermal imaging technology by police in the street to scan for marijuana in homes violates the Constitution's ban on unreasonable searches. He opposes the Court's effort to place caps on punitive damages as a violation of our federal system of government. He has voted to strike down literally thousands of harsher criminal sentences because they were based on facts found by judges rather than juries, as required by the Bill of Rights. He supports the right of anonymous political speech, and wants advertising and other commercial speech to receive the same rights as political speech, because he believes them protected by the First Amendment.

No one, of course, would deny that Justice Thomas has strong conservative views on constitutional law. He rejects much of affirmative action, believes *Roe v. Wade* was wrongly decided, recognizes broad executive powers in wartime, and allows religious groups more participation in public life. But I have long thought that there is a deeper principle of political philosophy at work in Justice Thomas's thought that goes beyond the close interpretation of disparate constitutional text. What he brings to the Court as no other justice does is a characteristically American skepticism of social engineering promoted by elites—whether in the media, academia or well-heeled lobbies in Washington—and a respect for individual self-reliance and individual choice. He writes not to be praised by professors or pundits, but for the American people.

As his memoir, *My Grandfather's Son*, shows, Justice Thomas's views were forged in the crucible of a truly authentic American story. This is a black man with a much greater range of personal experience than most. A man like this on the Court is the very definition of the healthy diversity that our misguided affirmative action programs seek. As a result, Justice Thomas opposes affirmative action not just because it violates the guarantee of racial equality in the Equal Protection Clause, but because it subordinates individual energy, ambition, and talents to misinformed and misguided social planning. In his dissent from the Court's approval of the use of race in law-school admissions, he quoted Frederick Douglass: "If the negro cannot stand on his own legs, let him fall also. All I ask is, give him a chance to stand on his own legs! Let him alone!" Justice Thomas observed: "Like Douglass, I believe blacks can achieve in every avenue of American life without the meddling of university administrators."

In a 1995 race case, Justice Thomas explained why he thought the government's use of race was wrong. Racial quotas and preferences run directly against the promise of the Declaration of Independence that all men are created equal. Affirmative action is "racial paternalism" whose "unintended consequences can be as poisonous and pernicious as any other form of discrimination." Justice Thomas speaks from personal knowledge: "So-called 'benign' discrimination teaches many that because of chronic and apparently immutable handicaps, mi-

norities cannot compete with them without their patronizing indulgence." He argued that "these programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are 'entitled' to preferences."

One of the most admirable traits that I have witnessed in Justice Thomas is his focus on speaking honestly about his views, rather than concerning himself with the politics of winning votes on the Court. By forswearing the role of coalition builder or swing voter, Justice Thomas has used his opinions to highlight how the latest social theories hurt those they are said to help. Because he both respects grassroots democracy and knows more about poverty than most people do, he dissented vigorously to the Court's 1999 decision to strike down a local law prohibiting loitering in an effort to reduce inner-city gang activity. "Gangs fill the daily lives of many of our poorest and most vulnerable citizens with a terror that the court does not give sufficient consideration, often relegating them to the status of prisoners in their own homes."

Justice Thomas is an admirer of the work of Friedrich Hayek and Milton Friedman, both classical liberals. His firsthand experience of poverty, bad schools and crime has led him to favor bottom-up, decentralized solutions for such problems. He rejects, for example, the massive, judicially-run desegregation decrees that have produced school busing and judicially-imposed tax hikes. A student of a segregated school himself, Justice Thomas declares that "it never ceases to amaze me that the courts are so willing to assume that anything that is predominantly black must be inferior."

To Justice Thomas, the national government's command-and-control policies have failed to make the poorest any better off. Rather, they have simply suppressed innovation in solving the nation's problems. He believes that the Constitution allows not just states and cities, but religious groups, to experiment to provide better education. In a 2002 concurrence supporting the use of school vouchers, Justice Thomas again quoted Frederick Douglass: Education "means emancipation. It means light and liberty. It means the uplifting of the soul of man into the glorious light of truth, the light by which men can only be made free." Justice Thomas followed with the sad truth: "Today many of our inner-city public schools deny emancipation to urban minority students."

"While the romanticized ideal of universal public education resonates with the cognoscenti who oppose vouchers," Justice Thomas wrote, "poor urban families just want the best education for their children, who will certainly need it to function in our high-tech and advanced society."

These are not the words of an angry justice, or a political justice, but of a human justice. Justice Thomas's personal story shows him to be all too aware of the imperfections in our society and mindful of the limits of the government's ability to solve them. That kind of understanding and humility, and personal courage in the face of incessant unjustified attack, is what most Americans would want on their Supreme Court. Read a Thomas opinion on a subject like affirmative action, religion, crime, or free speech, and you cannot miss its authentic voice, unmistakable in its clarity, logic and moving language.

During the administration of George W. Bush, in which I served, there was speculation that the President might elevate Justice Thomas to the Chief Justiceship to replace Chief Justice William H. Rehnquist. That position, of course, went to Chief Justice John G. Roberts. In the end, I believe that the President did Justice Thomas and

the country an unintentional favor. I believe he can do more good for the country as an outspoken associate justice than he could as Chief Justice. Because he is not the Chief Justice, Thomas has more freedom to speak his mind—and he does so on a regular basis. Clarence Thomas, growing up in the segregated South, beating poverty and hardship to succeed in his education and survive in the political shark pool of Washington, brings a unique outsider's perspective to the Court and the Constitution. Without the burden of the chief justiceship, Thomas can pull aside the curtain of clever legal and intellectual argumentation to reveal the stark and real policy choices being imposed by the Court on the nation.

Thank you for commemorating the twentieth anniversary of Justice Thomas's confirmation to the Supreme Court. I am honored that you asked me to contribute a few thoughts on the occasion, and I continue to feel myself lucky to have worked for both you and Justice Thomas in the years since.

Best wishes,

JOHN YOO,  
*Professor of Law.*

GEORGE MASON UNIVERSITY  
SCHOOL OF LAW,  
*Arlington, VA, October 8, 2011.*

Hon. ORRIN G. HATCH,  
*U.S. Senate,*  
*Washington, DC.*

DEAR SENATOR HATCH: I write on the occasion of Justice Clarence Thomas' twentieth anniversary on the Supreme Court. It was my great privilege to serve as a law clerk to Justice Thomas during the October Term 2001.

In the past two decades, Justice Thomas has blazed an influential path, focusing on the text and history of the Constitution and following these wherever they may lead. Many perceived his potential from the beginning of his tenure, but now even his critics and skeptics have acknowledged his distinct and important impact on the Court.

Lawyers, friends, and students often ask what it was like to clerk for Justice Thomas. In his commitment to hard work and careful thinking, Justice Thomas taught his clerks many lessons in the law. The Justice encouraged us to debate the merits of each case, digging into the finer points of law and its particular application to the facts before the Court. We provided our best assessments to the Justice while he was deliberating. But once he decided, the debate ended. Whatever points of disagreement may have remained, a clerk could proceed knowing that the decision was based on the Justice's honest judgment. The integrity of this process, without intellectual compromise or concern for newspaper editorials, reflected Justice Thomas' unwavering commitment to the law and to his oath to uphold the Constitution of the United States.

Yet the clerkship was more than legal training. Justice Thomas shared rich experiences from his own life. He spent a great deal of time talking with us—about our professional futures, our families, and, of course, sports. In the years following my clerkship, Justice Thomas has remained a mentor and inspiration, providing professional and personal advice whenever needed. He has an excellent way of helping one see what is important.

Justice Thomas' generosity of spirit extends beyond his "clerk family." He regularly speaks to student groups and takes time from his busy schedule to meet with young people. I have seen how this inspires them. A few years ago, he volunteered to speak to my constitutional law class. No topic was out of bounds as students asked the Justice about his judicial philosophy, the

role of the Supreme Court, the dynamics between the justices, and his personal history. With good humor, Justice Thomas stayed after class until every student who wanted a signature or picture had a turn.

This was not an unusual event—but simply one example of the Justice's graciousness and engagement in a wider public dialogue. In this regard, he elevates the role of the Supreme Court through his public appearances and meetings. Although he does not seek commendation or attention from the usual sources, Justice Thomas seeks to inspire others by example, just as he recognizes the importance of those who inspired him along the way. Those who have met him, even just in a public lecture, know his intelligence, candor, and bellowing laugh.

Justice Thomas' tremendous jurisprudential contribution can be read in the decisions of the Court—his influence increasingly documented by academics and justly recognized by lawyers and the public. In this short letter I have shared some personal reflections on Justice Thomas because this record is less public and often obscured. Justice Thomas presents a rare example from public life that one's intellectual and personal legacies need not be inversely related.

I am grateful for your leadership in the confirmation of Justice Clarence Thomas. Having served as counsel to the Senate Judiciary Committee under your Chairmanship during the year before my clerkship, I am especially honored to have the opportunity to join you in commemorating Justice Thomas' first twenty years on the Supreme Court.

Best regards,

NEOMI RAO.

October 12, 2011.

Hon. ORRIN G. HATCH,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR HATCH: This past weekend, we watched on CSPAN key excerpts from the October 1991 U.S. Senate Judiciary Committee confirmation hearings for Justice Clarence Thomas. It made us recall the critical role that you played in those hearings, methodically debunking the absurd accusations raised by liberal left interest groups and Senate staffers who would stop at nothing to bring down a black man who strayed from the ideological plantation. As Justice Thomas said presciently at the time, America herself was harmed by those attacks far more than he was. Our great institutions of government—the U.S. Senate and the Supreme Court—were harmed. Sadly, those injuries perdure.

But we share your joy in celebrating this day in 2011, as you mark on the Senate floor the happy occasion of Justice Thomas' twentieth anniversary on the Supreme Court. As two of his former law clerks, who knew him from the days even before he was on the Court, we speak for all Americans who love Justice Thomas, our country, and our Constitution when we say "thank you" for what you did in 1991, for your prominent role in averting the "high-tech lynching" in the Judiciary Committee, and for marking this milestone today.

The passing of these 20 years has only confirmed what you knew back then: that Justice Thomas is an extraordinary American, one of the greatest of his generation—indeed, of any generation, and as our friend Bill Bennett recently said, "the greatest living American." He has taught us to understand the Constitution, this great gift the Founders gave us, in its fullness and integrity: for example, that without proper respect for private property (what the Founders called "the pursuit of happiness" in the Declaration of Independence), there can be no real freedom; that freedom and equality are real-

ly two sides of the same coin; and that if we are to be a nation of laws and not of men, judges must look not from the point of view of their own race, sex, religion, or other personal characteristics in deciding cases, but to the truth of the law and the rule of law, which is for all persons, at all times.

Justice Thomas reminds us that interpreting the U.S. Constitution is "not a game of cute phrases and glib remarks in important documents." It is, rather, "a deadly serious business." He approaches each case with no preconceptions, only an honest and incisive intellect and a dogged commitment to "get the law right" based on a clear understanding of the Constitution and the principles it was created to vindicate—preservation of life, liberty, and property—and to the structural Constitution that created a system of self-government for the first time in history based upon a clear-eyed view of human nature. He treats the great gift given to us, and to all civilization, by the Founders as it should be treated: as a precious treasure, not something to be twisted, played with, or destroyed.

And those of us who have been his employees and friends have been doubly blessed by having a boss of intense personal loyalty, who sees us all as family, who not only guides and encourages us in our legal and other professional endeavors, but is always there for us in our personal lives when we need advice or support—through cancer diagnoses, the illnesses and deaths of family members, the births and baptisms and deaths of children, and all the other joys and tragedies of life.

We look back on these 20 years with pride—but not surprise—at what the Great Man has accomplished on the highest Court in the land. It is now undeniable, even to the liberal left and the mainstream media that Justice Thomas is, in fact, a leader and a powerful intellectual force on the U.S. Supreme Court. America has learned from the investigative reporting and writing of Jan Crawford, in *Supreme Conflict: The Inside Story of the Struggle for Control of the Supreme Court*, that Justice Thomas was a powerful, independent, and influential voice on the Court from the very first day he walked through the door, shortly after the 1991 confirmation hearings ended and he was seated as the junior Justice on the Court.

We can't let the moment pass without also noting that Justice Thomas, notwithstanding his greatness, has always been a man of deep and sincere humility, as befits a servant of the law. He continues to be strengthened by his favorite prayer, the Litany of Humility, which asks Jesus to "deliver me . . . from the desire of being loved, extolled, honored, praised, [and] approved," and "from the fear of being humiliated, despised, ridiculed, [and] wronged. . . ."

May all of our great Country's public servants, and all of us citizens, pray with him the same prayer. We join you today in honoring and praising a truly great man.

Respectfully yours,

LAURA A. INGRAHAM AND  
WENDY STONE LONG.

THE UNIVERSITY OF GEORGIA  
SCHOOL OF LAW,  
August 31, 2011.

Sen. ORRIN HATCH,  
*Hart Senate Office Building, Washington, DC.*

DEAR SENATOR HATCH: Thank you for honoring the twentieth anniversary of Justice Clarence Thomas' confirmation to the Supreme Court of the United States. I had the privilege of serving as one of Justice Thomas' law clerks during October Term 1998. I cannot possibly hope to distill into a single letter the lessons, reflections and memories of that remarkable year. Hopefully, though,

this letter in some small way may give you, your colleagues in the Senate and the American public some sense of this remarkable man.

October Term 1998 was not, to borrow an unfortunate term from the media, a "blockbuster." It did not produce a slew of decisions whose holdings made headlines. Of course, this is not to say that the cases were insignificant—they surely were for the litigants before the Court, for the broader constituencies affected by the Court's decisions and for the country. Perhaps precisely for this reason, we digested a lesson that Justice Thomas taught us early in the term—our job was to help him decide cases and to serve the Court. We should not worry about the political impact of a decision or its media significance. Nonetheless, we had to understand that, for the litigants, the case may well be the most important matter in their lives. Our job was to "call them like we see them", to master the facts of a case and to examine the relevant legal authorities.

This workmanlike approach infused everything we did—from drafting memos for the "cert pool" to preparing bench memoranda. He taught us to leave no stone unturned and to run down obscure but potentially important jurisdictional snags in cases. Consequently, when the day of oral argument came around, he was prepared for everything. Thus, it was unsurprising when he did not ask a lot of questions—he already knew the answers!

Justice Thomas also taught us not to be afraid of the truth. It would have been unforgivable for any of us to shade a fact or twist a precedent in support of some preordained result. There were right answers, and there were wrong ones. To be sure, there were hard cases, and sometimes the right answers were difficult to discern or required, ultimately, a judgment. That process of discernment, however, required hard work—to dig into the history of a constitutional amendment, to focus on the language of the laws enacted by Congress and not to be afraid where that research led us. When we met with him—either privately or as a "chambers team"—we presented the results of our work with directness, honesty and forthrightness. The result of a working atmosphere was a work product that everyone could understand and believe in because no corners had been cut.

These were not the only lessons that Justice Thomas taught us. He also taught us the importance of treating people with respect. As his elbow clerks, we often had the privilege of accompanying him places—whether morning mass, breakfast in the Court cafeteria or sometimes lunch over at his old stomping ground in the Senate. On these outings, it never ceased to amaze me how many people the Justice knew. Not only did he know their names, he also asked after their families; he could recall the names of their spouses, the activities of their children and the last joke that they told. This was true whether the person addressed was a former Senate staffer or a cafeteria worker. Think about how often each of us passes one of the countless, hardworking individuals like a janitor or security guard—men and women who work often without recognition, acknowledgement or a word of thanks. How many of your Senate colleagues could name the janitors who sweep the floors, clean the bathrooms and, on a daily basis, ensure that the appearance of the building reflects the dignity of the institution? Without exception, I know Justice Thomas could name them all those who serve in the Court, those who serve in the Senate and countless others into whom he has come into contact. The example he set for us was powerful, and I am reminded of it on a regular basis when I try

to accord the same respect to every individual with whom I come into contact, just as he did.

Finally, no letter praising Justice Thomas would be complete without reference to his family, especially his wife Virginia. As you undoubtedly know, she is a rock for him, and their marriage is an incredibly strong, indeed inspiring, one. I had the privilege firsthand of benefiting from Justice Thomas's keen insight into the importance of a strong marriage as I faced a difficult dilemma during the end of my clerkship. My fiancée and I were due to be married after the clerkship, and I had already accepted a job in the Criminal Division of the Justice Department (fulfilling a lifelong dream to serve as a federal prosecutor). I had also made a "prenuptial" promise to my fiancée (who was from Europe) that if the opportunity ever came along to live and work in her home country, I would do so. In March 1999, I received an offer from a law firm in Europe and confronted a dilemma—pursue my dream job or fulfill that prenuptial promise? After stewing on the dilemma for several hours, I sheepishly knocked on Justice Thomas's door and asked if we could have a "throwdown" (his term for a conversation where we could put all our concerns about a matter on the table). He listened patiently as I laid out my dilemma to him. At the end of my monologue, he looked me directly in the eye, and uttered words I will never forget: "Bo, a man goes where his wife will be happy. The Justice Department will always be there, but if you break this promise, you may wake up one day and find your wife is not." The moral certainty behind his advice helped me make the right decision. I called the Justice Department, withdrew my application (a decision that, to the Department's credit, was graciously accepted) and accepted the position in Europe. My wife and I recently celebrated our tenth anniversary, and not a day goes by when I do not reflect on (and sometimes share) Justice Thomas's advice.

As I read over this letter, I realize it does not begin to scratch the surface of all the memories, reflections and impressions created both during my year of service with Justice Thomas and in the intervening thirteen years (for the relationship endures long after the clerkship ends). All I can say is thank you—for your unflinching support of this true patriot and to Justice Thomas for his willingness to serve the country.

Sincerely,

PETER B. RUTLEDGE,  
*Professor of Law.*

UNIVERSITY OF NOTRE DAME,  
THE LAW SCHOOL,  
*Notre Dame, IN, October 13, 2011.*

Hon. ORRIN HATCH,  
*U.S. Senator, U.S. Senate, 104 Hart Office Building, Washington, DC.*

DEAR SENATOR HATCH: I am writing on the occasion of the twentieth anniversary of Justice Clarence Thomas's confirmation to the United States Supreme Court. During the Supreme Court's 1998-1999 term, I had the great privilege of serving as Justice Thomas's law clerk. The experience was one of the most important and formative of my life. During my year in his chambers, Justice Thomas—whom I had long admired as a jurist—became my mentor, teacher, and friend. He taught me, as he teaches all of his clerks, to be a better lawyer—the kind of lawyer who always honors the law by seeking and applying the correct answer, even when the correct answer does not comport with personal preferences. But even more importantly, Justice Thomas taught me, as he teaches all of his clerks, to be a better person—the kind of person who chooses right

over wrong, serves when called, and always treats every individual, regardless of rank or station, as their equal.

In the years since his confirmation, Justice Thomas's critics have begun to give him his due as a jurist. Legal academics and public intellectuals, many of whom disagree virulently with his approach to the law, now grudgingly acknowledge the intellectual weight of his opinions, the consistency and clarity of his jurisprudential approach to constitutional questions, the respect accorded to him by his colleagues, and the increasing evidence of his intellectual leadership on the Court. Most importantly, Justice Thomas's opinions reflect an unwavering fidelity to the Constitution as it was intended to be understood, a steadfast commitment to religious liberty and free expression, and a firm insistence that equality of opportunity is best promoted (indeed must be promoted) by equal treatment under the law.

I know that law professors usually write tributes about Justices as jurists, so I hope you will understand if I depart from the mold and begin with a few words about the Justice as a man. I do so in part because I am sure that there will be no shortage of reflections about Justice Thomas as a jurist in the days and years to come. But I also do so because, during my year as his law clerk and in the years since, I was, and have been, impressed and formed by Justice Thomas's humanity, as much as (or more than) his judicial philosophy or the careful crafting of his opinions.

As you undoubtedly remember, during his confirmation hearings, then-Judge Thomas described watching, through his chamber's window, as shackled prisoners were led into the federal courthouse. "I say to myself almost every day," he introspectively reflected, "But for the grace of God there go I." In the intervening years, more than one commentator has accused Justice Thomas of reneging on his implicit promise—embedded in his self-identification with the prisoners—to look out for the little guy. According to these critics, Thomas has turned out to be anything but empathetic to the plight of the downtrodden. This view—that Justice Thomas exhibits a disregard, even contempt, for the difficulties facing the least fortunate among us—pervades the popular imagination. These criticisms reflect a profound misunderstanding of Justice Thomas and his jurisprudence. There is a reason why Justice Thomas, upon his nomination to the Supreme Court, first thanked his grandparents and the Franciscan nuns who educated him in Savannah's segregated Catholic schools: He sincerely believed that they saved his life. And one need only spend a day with Justice Thomas to realize that he still believes that, but for their intervention—or perhaps more accurately, but for God's intervention through them—his life might well have taken a very different path.

In his years on the Supreme Court, Justice Thomas's generosity has become increasingly difficult to ignore. Even his critics have begun to acknowledge publicly his personal efforts to help "the little guy"—from his decision to raise his sister's grandson, to his practice of welcoming groups of poor and predominantly minority school children to the Court, to his record of mentoring young people, to his involvement in a scholarship program that sends first-generation professionals to New York University School of Law on a race-blind basis. It was one of the great privileges of serving as his law clerk to witness these efforts up close—and to see that these public acts of generosity were coupled with dozens more private acts of kindness, each as natural as it was reflective of Justice Thomas's generosity and character. A few examples: Justice Thomas not

only knew every member of the Supreme Court's staff by name, he also knew the names of their spouses and many of their children. (I arrived early one morning to find six custodians crowded into his office teasing him about a Dallas Cowboy's loss.) Walking on the hill one day, Justice Thomas stopped to talk to a homeless man whom, he explained, he had known for years. Another day, he stopped in front of the Hart Senate Office Building to ask a police officer about his son, who had just started college. When we asked how he knew that the officer's son was entering college, he explained he remembered the officer from his days as a staffer for Senator Danforth. (Justice Thomas worked for Senator Danforth from 1970 until 1981; I clerked for him seventeen years later.)

Contrary to elite opinion, Justice Thomas's concern for the metaphorical "little guy" is also reflected in his jurisprudence. Critics often overlook this fact because his views about how the law can properly help the poor, the marginalized, and (perhaps especially) racial minorities are profoundly contrarian, at least as measured against prevailing elite sentiments. But properly understood—that is, understood in the context of Thomas's history and teleology—the evidence of his attentiveness to the underdog is undeniable. Opinions reflecting Thomas's concern for "the little guy" contain at least three overlapping themes. The first is an unwavering respect for, and faith in, the competence and ingenuity of all people, regardless of race or station. Consider, for example, his scathing indictment of the compulsory integration programs at issue in *Missouri v. Jenkins* (1995):

"It never ceases to amaze me," he began, "that the courts are so willing to assume that anything predominantly black must be inferior." The second theme is a distrust of many social programs designed to "help" the disadvantaged, which is frequently interpreted as reflecting either callousness, naïveté or both. But Justice Thomas is acutely aware of historical lessons suggesting that government actions ostensibly designed to help sometimes mask illicit motives, and he is deeply suspicious of "window dressing" efforts that enable elites to avoid rolling up their sleeves and engaging in the difficult task of equipping the disadvantaged with the skills they need to succeed. As he observed in *Grutter v. Bollinger* (2003), which upheld the University of Michigan Law School's affirmative action program, "It must be remembered that the Law School's racial discrimination does nothing for those too poor or uneducated to participate in elite higher education and therefore presents only an illusory solution to the challenges facing our Nation." The third theme reflects, in my view, the genuineness of Justice Thomas's "window dressing" concern. Thomas is jealously protective of the kind of "back-to-basics" efforts that he believes will actually help the disadvantaged. His frustration with opponents of these efforts is palpable, and reflected in several opinions that warn that decisions invalidating such efforts will have devastating consequences for our most vulnerable citizens. For example, he began his concurrence in *Zelman v. Simmons-Harris* (2002), which upheld a school choice program in Cleveland, by quoting Frederick Douglass: "[E]ducation . . . means emancipation. It means light and liberty. It means the uplifting of the soul of man into the glorious light of truth, the light by which men can only be made free." He continued, "[M]any of our inner-city public schools deny emancipation to urban minority students. . . . [S]chool choice programs . . . provide the greatest educational opportunities for . . . children in struggling communities."

I do not make these observations to prove the wisdom of Justice Thomas's views on the

merits, but rather to respond to a particularly pernicious and deeply misguided criticism of his life and his jurisprudence. Nor should my reflections be interpreted as evidence that he is, as some have claimed, a results-oriented jurist. That Justice Thomas's expressed constitutional commitments are both genuine and self-binding is, in my view, established in an undeniable record of reaching conclusions that run counter to his personal preferences. And, I think it important to note, Justice Thomas himself has spoken on the subject of how a judge best serves the "little guy" and that is to maintain fidelity to the law. As Thomas once explained, "A judge must get the decision right because, when all is said and done, the little guy, the average person, the people of Pinpoint, the real people of America will be affected not only by what we as judges do, but by the way we do our jobs." And, in living out that aspiration, every day, Justice Thomas has become a model jurist, worthy of our commendations on this day.

Sincerely,

NICOLE GARNETT,  
*Professor of Law.*

#### US-RUSSIA NUCLEAR COOPERATION

Ms. MURKOWSKI. Mr. President, today I wish to note the importance of growing Russian-American cooperation in the field of civil nuclear energy. Our common interests in this area are a significant opportunity to enhance energy security and economic growth for both nations. Just as importantly, building on a good record of cooperation on nuclear energy can form a basis for improving our relationship with the Russian Federation more broadly.

As the two largest nuclear complexes, the United States and Russia play an essential role in setting global standards. We have worked effectively together on non-proliferation initiatives through the Nunn-Lugar program for nearly a generation. But our cooperation in nuclear energy is not as well known.

Russia has long been America's largest foreign partner in nuclear power through the HEU-LEU Agreement of 1993. Better known as the "Megatons-for-Megawatts" agreement, Russia's nuclear corporation Rosatom has converted fissile material from thousands of weapons into energy for American homes and businesses. Nearly half of the fuel used in U.S. reactors is of Russian origin, which accounts for 10 percent of the electricity produced in this country.

In terms of nuclear technology, we have a lot to learn from one another. If the event at the Fukushima reactors in Japan has taught us anything, it's that nuclear safety is an issue that crosses borders. The recent signing of the "Joint Statement on the Strategic Direction of U.S.-Russian Nuclear Cooperation" between Rosatom and the Department of Energy is a good example and will take advantage of Russian technological leadership on advanced reactors with passive safety systems. It recognizes that the long-term answers on nuclear safety will be a new generation of inherently safe reactors.

I applaud the work of the Nuclear Energy and Nuclear Security Working Group led by Deputy Energy Secretary Dan Poneman and Rosatom Director General Sergey Kirienko. By expanding their joint efforts to include nuclear safety and development of a global framework for nuclear energy, they are bringing the world's best technical expertise to bear on critical issues that must be addressed to sustain public confidence in nuclear energy.

Mr. President, cooperative efforts between the United States and Russia in civil nuclear energy are a success story in an often complex relationship. Building on this relationship should be a priority for both countries.

#### ELECTRONIC COMMUNICATIONS PRIVACY ACT

Mr. LEAHY. On October 21 we will celebrate the 25th anniversary of the enactment of the Electronic Communications Privacy Act, ECPA, one of the Nation's premiere privacy laws for the digital age. Since the ECPA was first enacted in 1986, this law has provided privacy protections for e-mail and other electronic communications for millions of Americans who communicate and transact business in cyberspace.

Today, the many rapid advances in technology that we have witnessed make this key privacy law more important than ever if we are to ensure the right to privacy. Just in the past few months, we have witnessed significant data breaches involving Sony and Epsilon that impact the privacy of millions of American consumers. We are also learning that smartphones and other new mobile technologies may be using and storing our location and other sensitive information, posing new risks to privacy.

When I led the effort to write the ECPA 25 years ago, no one could have contemplated these and other emerging threats to our digital privacy. But today, this law is significantly outdated and outpaced by rapid changes in technology and the changing mission of our law enforcement agencies after September 11. At a time in our history when American consumers and businesses face threats to privacy like no time before, we must renew the commitment to the privacy principles that gave birth to the ECPA a quarter century ago. That is why I am working to update this law to reflect the realities of our time.

Before the end of the calendar year, the Judiciary Committee will consider legislation that I have drafted to update the ECPA and to bring this law fully into the digital age. My bill makes several commonsense changes to the law regarding the privacy protections afforded to consumers' electronic communications. Among other things, my bill gets rid of the so-called "180-day rule" and replaces this confusing mosaic with one clear legal standard for protection of the content

of e-mails and other electronic communications. This bill also provides enhanced privacy protections for American consumers by expressly prohibiting service providers from disclosing customer content and requiring that the Government obtain a search warrant based on probable cause to compel the disclosure of the content of an individual's electronic communications.

The ECPA Amendments Act also gives important new privacy protections for location information that is collected, used, or stored by service providers, smartphones, or other mobile technologies. To address the role of new technologies in the changing mission of law enforcement, my bill also provides important new tools to law enforcement to fight crime and protect cybersecurity including—clarifying the authority for the government to temporarily delay notice to protect the integrity of a law enforcement investigation and allowing a service provider to disclose content that is pertinent to addressing a cyberattack to the government to enhance cybersecurity.

I drafted this bill with one key principle in mind—updates to the Electronic Communication Privacy Act must carefully balance the interests and needs of consumers, law enforcement, and our Nation's thriving technology sector. I also drafted this bill after careful consultation with many government and private sector stakeholders, including the Departments of Justice, Commerce and State, local law enforcement, and members of the technology and privacy communities.

As the ECPA approaches its silver anniversary, I join the many privacy advocates, technology leaders, legal scholars, and other stakeholders who support reform of the ECPA in celebrating all that this law has come to symbolize about the importance of protecting Americans' privacy rights in cyberspace. I hope that all Members will join me in commemorating this important milestone anniversary and in supporting the effort in Congress to update this law to reflect the realities of the digital age.

#### TRIBUTE TO BARRIE DUNSMORE

Mr. LEAHY. Mr. President, Vermont benefits both by the people who were born there and those who come to Vermont and make us even better.

One of those people who has chosen Vermont is Barrie Dunsmore, who before his change in careers had been one of the foremost reporters and commentators on the national news scene. When he and his wife, Whitney Taylor, and his daughter, Campbell, came to Vermont, we Vermonters have benefited by his columns in *The Rutland Herald* and his commentary on Vermont Public Radio. Recently Barrie took a number of his columns and collected them in a book, "There and Back." I could not begin to do his writings justice, but my wife Marcelle